

REMARKS

I. Status of Claims

Claim 33 has been canceled herein and claims 1, 16, 31, and 34–36 have been amended herein without prejudice or disclaimer. Claims 4, 5, 8, 12–15, 19, 20, 23, and 27–30 stand withdrawn from the application as being directed toward non-elected subject matter. Claim 32 was previously canceled. Thus, claims 1–3, 6, 7, 9–11, 16–18, 21, 22, 24–26, 31, and 34–36 are currently pending on the merits.

II. Amendments to the Claims

Claims 1, 16, and 36 have been amended herein to recite, *inter alia*, whereby the amount of fluid drawn into “and retained in” the indicator (or second) pathway is indicative of the amount of fluid drawn into the feeding (or first) pathway, which amendment is fully supported by at least Figure 6 and paragraph [032] of the original specification. Claims 1, 16, and 31 have been amended herein to recite, *inter alia*, providing an indicator (or second) pathway “having a different volume” from the feeding pathway, which amendment is fully supported by at least paragraphs [030], [032], and [039] of the original specification. Claim 1 has further been amended herein to recite, *inter alia*, “receiving suction from a baby’s mouth; providing the suction to the feeding pathway and the indicator pathway; and measuring the amount of fluid drawn into and retained in the indicator pathway,” which amendment is fully supported by at least paragraphs [028], [032], and [038] of the original specification. Claim 31 has further been amended herein to recite, *inter alia*, “indicating the presence of fluid drawn into and retained in the second pathway, wherein the presence of fluid drawn into and retained in the second pathway indicates the presence of suction to the first pathway,”

which amendment is fully supported by at least paragraph [032] and original claim 33.

No new matter has been added by those amendments. Therefore, Applicant requests that the amendments be entered without objection.

III. Rejection Under 35 U.S.C. § 101

The Office rejects claim 1 under 35 U.S.C. § 101 for allegedly falling outside the categories of patent-eligible subject matter, asserting that “there are no process steps being claimed, instead only ‘providing’ steps are claimed.” Office Action at 2. Applicant has amended claim 1 to recite, *inter alia*, the steps of “receiving suction from a baby’s mouth,” “providing the suction to the feeding pathway and the indicator pathway,” and “measuring the amount of fluid drawn into and retained in the indicator pathway.” Therefore, Applicant asserts that the rejection has been rendered moot and respectfully requests that it be withdrawn.

During the Examiner Interview held on March 29, 2010, Applicant discussed that the proposed amendment “measuring the amount of fluid drawn into and retained in the indicator pathway” is intended to mean that the amount of fluid drawn into and retained in the indicator pathway is determined by evaluating the level of fluid retained in the indicator pathway. See, e.g., Figure 6, paragraph [038], and paragraph [032] (“In this manner, one can easily see on the indicator pathway the total volume of fluid consumed by the baby through the feeding pathway.”). To measure the amount of fluid drawn into and retained in the indicator pathway, it is not necessary that the precise volume of fluid retained in the indicator pathway be determined (although this is not precluded by the claims), but simply that the level of fluid that has been drawn into and retained in the indicator pathway be determined. The Examiners indicated that they agreed with

Applicant's interpretation, and stated that the amendments should be sufficient to overcome the pending rejection under 35 U.S.C. § 101.

IV. Rejections to the Claims

(A) Woolridge

The Office has rejected claims 1, 6, 9, 16, 21, 24, 31, 32, and 36 under 35 U.S.C. § 102(b) as allegedly anticipated by Woolridge et al. ("The continuous measurement of milk intake at a feed in breast-fed babies.")(Woolridge); dependent claims 2, 3, 17, and 18 under 35 U.S.C. § 103(a) as allegedly obvious over Woolridge; dependent claims 7, 22, and 34 under 35 U.S.C. § 103(a) as allegedly obvious over Woolridge in view of U.S. Patent Application No. 2004/0055987 to Paige (Paige); dependent claims 10, 11, 25, and 26 under 35 U.S.C. § 103(a) as allegedly obvious over Woolridge in view of U.S. Patent No. 6,109,100 to Buckley et al (Buckley); and dependent claim 35 under 35 U.S.C. § 103(a) as allegedly obvious over Woolridge in view of U.S. Patent No. 6,741,523 to Bommarito et al (Bommarito).

The Office asserts that Woolridge discloses a method of measuring fluid flow from a fluid source to a baby's mouth. Office Action at 3. The Office further asserts that Woolridge discloses a nipple with multiple openings through the wall of the nipple, wherein the Office has interpreted any one of the openings as being the feeding pathway and any other of the openings as being the indicator pathway. *Id.* The Office states that "the amount of milk flowing through each pathway is equivalent to the total amount of milk flowing through the flow transducer divided by five" and that, "[t]herefore, the amount of milk flowing through one pathway is equivalent to the amount of milk flowing through any of the other pathways." *Id.* at 4. Applicant respectfully traverses.

As amended herein, each of independent claims 1 and 16 recite, *inter alia*, “an indicator pathway having a different volume from the feeding pathway.” This is not taught or suggested by Woolridge. Moreover, as amended herein, each of independent claims 1 and 16 recite, *inter alia*, “whereby the amount of fluid drawn into and retained in the indicator pathway is indicative of the amount of fluid drawn into the feeding pathway.” This is also not taught or suggested by Woolridge. Regardless of whether the total amount of fluid drawn through any two of the openings of Woolridge would be the same as each other, as asserted by the Office, the amount of fluid drawn into “and retained in” one of the pathways would not be the same as (or in any way indicative of) the total amount of fluid drawn into another.

To the extent that any fluid drawn into any one of the openings in the nipple of Woolridge might be “retained” in that opening, the amount of fluid would only be, at most, the volume of the opening itself. The remainder of the fluid drawn into the opening would merely pass through the opening and into the baby’s mouth—i.e., it would not be “retained” in the opening.¹ Moreover, the amount of fluid possibly retained in any one of the openings of Woolridge (i.e. at most the volume of the opening itself) would have no relationship to, or indicate in any way, the total amount of fluid that has been drawn into any one of the other pathways and passed to the baby’s mouth as recited by independent claims 1 and 16 (“wherein the amount of fluid drawn into and retained in the indicator pathway is indicative of the amount of fluid drawn into the feeding pathway”).

¹ See <http://dictionary.reference.com/browse/retain—retain>: (1) **to keep possession of** (2) to continue to use, practice, etc. (3) **to continue to hold or have** (4) to keep in mind; remember (5) **to hold in place or position** (6) to engage, esp. by payment of a preliminary fee. (*emphasis added*).

For comparison, see the example depicted in Figure 6 of the present application, wherein the total amount of fluid drawn into the indicator pathway 380 is drawn into and retained in the pathway such that, if one were to stop the feeding process at any point, the fluid drawn into the indicator pathway would continue to be held there, and would be indicative of the amount of fluid drawn into the feeding pathway.

Similarly, independent claim 31, as amended herein, recites a method of indicating suction from a baby's suckling, comprising "providing the suction to at least a first pathway and a second pathway having a different volume from the first pathway" and "indicating the presence of fluid drawn into and retained in the second pathway, wherein the presence of fluid drawn into and retained in the second pathway indicates the presence of suction to the first pathway." Woolridge does not teach or suggest such a method of indicating suction from a baby's suckling.

Whatever Paige, Buckley, or Bommarito may teach about gradations, check-valves, or color codes, they fail to remedy the defects of Woolridge explained above. Therefore, the combination of Woolridge with any of Paige, Buckley, or Bommarito would also fail to anticipate or render obvious any of the pending claims. As such, Applicant respectfully requests that the rejections of the pending claims over Woolridge or Woolridge in view of any of Paige, Buckley, or Bommarito be withdrawn.

(B) Larsson

The Office has rejected claim 16 under 35 U.S.C. § 102(b) as allegedly anticipated by U.S. Patent No. 4,687,466 to Larsson (Larsson). The Office asserts that either one of the tubes 15 in Figure 1 of Larsson may be considered the feeding pathway and the other the indicator pathway. Office Action at 10. The Office further

alleges that, “since both pathways are equal in size and length and share the same fluid source, the fluid drawn into one pathway is indicative of the fluid drawn into the other pathway.” *Id.* Applicant respectfully traverses.

Larsson generally discloses a method for supplementing a baby’s feeding from a mother’s breast with a supplement container. At least one tube is provided from the container, ending adjacent a breast nipple, for providing the supplement to the baby while feeding. Col. 1, lines 65. In one embodiment, a second tube may be provided adjacent the other breast nipple, such that the infant can be readily switched from one breast to the other. *Id.* However, because a baby could only provide suction to one of the nipples at a time (and thus only one of the tubes at a time), the amount of fluid drawn into or retained in either one of the tubes would have no relationship to or indicate in any way the amount of fluid that has been drawn into the other pathway, as recited by the pending claims.² Therefore, for at least this reason, Larsson cannot anticipate or render obvious the pending claims, and Applicant respectfully requests that the rejection over Larsson be withdrawn.

V. Conclusion

For at least the above-outlined reasons, pending claims 1–3, 6, 7, 9–11, 16–18, 21, 22, 24–26, 31, and 34–36 should be allowable. In addition, each of withdrawn claims 4, 5, 8, 12–15, 19, 20, 23, and 27–30 ultimately depend from allowable independent claim 1 or 16. For at least that reason, claims 4, 5, 8, 12–15, 19, 20, 23,

² See independent claims 1 and 16 (“wherein the amount of fluid drawn into and retained in the indicator pathway is indicative of the amount of fluid drawn into the feeding pathway”) and independent claim 31 (“wherein the presence of fluid drawn into and retained in the second pathway indicates the presence of suction to the first pathway.”)

and 27–30 should also be allowable. Therefore, Applicant also respectfully requests rejoinder and allowance of all claims 1–31 and 34–36.

If the Examiner believes that a telephone conversation might advance prosecution of this application, the Examiner is cordially invited to call Applicant's undersigned attorney at (404) 653-6430.

Applicant respectfully submits that the Office Action contains a number of assertions concerning the related art and the claims. Regardless of whether those assertions are addressed specifically herein, Applicant respectfully declines to automatically subscribe to them.

Please grant any extensions of time required to enter this response and charge any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: May 17, 2010

By: /Jeffrey A. Freeman/
Jeffrey A. Freeman
Reg. No. 58,275